

CALIFORNIA COASTAL COMMISSION

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May 26, 2005

Wed 7b

TO: COMMISSIONERS AND INTERESTED PERSONS

**FROM: DEBORAH LEE, SOUTH COAST DEPUTY DIRECTOR
SHERILYN SARB, DISTRICT MANAGER, SAN DIEGO AREA OFFICE
LAURINDA OWENS, COASTAL PLANNER, SAN DIEGO AREA OFFICE**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF SAN DIEGO MAJOR
AMENDMENT NO. 2-04A (Fourth Quarterly Update) for Commission Meeting
of June 7-10, 2005**

SYNOPSIS

The subject LCP amendment was submitted and filed as complete on March 22, 2005. The date by which the Commission must take action, absent an extension of time limits by the Commission, is June 22, 2005. This report addresses a portion of the City of San Diego's second major LCP amendment request for 2004. This portion of the submittal addresses the Implementation Plan (IP), and is identified as LCPA 2-04A. Part B addresses incorporation of the Sunset Cliffs Natural Park Master Plan into the certified Peninsula LCP segment; Part C addresses updates to the Carmel Valley Neighborhood 8 Precise Plan and rezones a 5.4 acre site from Single Family and Open Space to Neighborhood Commercial and Open Space. A time extension request for these latter components (B and C) is scheduled on the June agenda, and they are expected to be brought before the Commission in July.

SUMMARY OF AMENDMENT REQUEST

The subject implementation plan (IP) amendment includes changes to several different ordinances of the certified Land Development Code (LDC), portions of which comprise the IP of the certified LCP. An overview of the amendment request includes, but is not limited to, the following items: amendment to create a deviation process to allow persons with disabilities the equal opportunity to use and enjoy a dwelling; change within the Open Space Residential zone category to allow for reasonable development of privately owned lots and to better implement the protection of open space; dissolution of the Board of Zoning Appeals and transfer of its powers and duties to the Planning Commission; consolidation of right-of-way information in the LDC to clarify the types of permits required and standards applied to improvements in the public right-of-way; changes to the permits required for site reconnaissance and testing/illegal grading procedures; changes to exempt public linear trails and public access projects from the development area regulations of the environmentally sensitive lands and the OR-1-2 zone; and, changes to require timely restoration for all emergency development activity conducted

within environmentally sensitive lands in accordance with an approved revegetation plan and the Biology Guidelines. Also proposed are a number of corrections to miscellaneous inconsistencies in the regulations that have resulted in misinterpretation of the development regulations. These include, in part, changes to the definition of “kitchen”; procedures for issuing a stop work order; language addressing when a map waiver may be requested; language addressing when a demolition removal permit may be issued; measurement of setbacks, etc.

SUMMARY OF STAFF RECOMMENDATION

The appropriate resolutions and motions begin on page 4. The suggested modifications begin on page 6. The findings for denial of a portion of the Implementation Plan Amendment as submitted begin on Page 6. The findings for approval of a portion of the Implementation Plan Amendment, if modified, are on Pages 15 and 18. The findings for approval of the remaining portion of the Implementation Plan Amendment as submitted begin on Page 19.

BACKGROUND

The City’s first IP was certified in 1988, and the City assumed permit authority shortly thereafter. The IP consisted of portions of the City’s Municipal Code, along with a number of Planned District Ordinances (PDOs) and Council Policies. Late in 1999, the Commission effectively certified the City’s Land Development Code and a few PDOs; this replaced the first IP in its entirety and went into effect in the coastal zone on January 1, 2000. While it has been in operation for five years, the City is reviewing this plan on a quarterly basis, and is expecting to make a number of adjustments to facilitate implementation; most of these will require Commission review and certification through the LCP amendment process. The City’s IP includes Chapters 11 and portions of Chapters 12 through 14 of the LDC.

ADDITIONAL INFORMATION

Further information on the City of San Diego LCP amendment #2-04A may be obtained from Laurinda Owens, Coastal Planner, at (619) 767-2370.

PART I. OVERVIEW

A. LCP HISTORY

The City of San Diego has a long history of involvement with the community planning process; as a result, in 1977, the City requested that the Coastal Commission permit segmentation of its Land Use Plan (LUP) into twelve parts in order to have the LCP process conform, to the maximum extent feasible, with the City's various community plan boundaries. In the intervening years, the City has intermittently submitted all of its LUP segments, which are all presently certified, in whole or in part. The earliest LUP approval occurred in May 1979, with others occurring in 1988, in concert with the implementation plan. The final segment, Mission Bay Park, was certified in November 1996.

When the Commission approved segmentation of the LUP, it found that the implementation phase of the City's LCP would represent a single unifying element. This was achieved in January 1988, and the City of San Diego assumed permit authority on October 17, 1988 for the majority of its coastal zone. Several isolated areas of deferred certification remained at that time; some of these have been certified since through the LCP amendment process. Other areas of deferred certification remain today and are completing planning at a local level; they will be acted on by the Coastal Commission in the future.

Since effective certification of the City's LCP, there have been numerous major and minor amendments processed. These have included everything from land use revisions in several segments, to the rezoning of single properties, and to modifications of citywide ordinances. In November 1999, the Commission certified the City's Land Development Code, and associated documents, as the City's IP, replacing the original IP adopted in 1988.

B. STANDARD OF REVIEW

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

C. PUBLIC PARTICIPATION

The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to each resolution.

- I. **MOTION I:** *I move that the Commission reject Part A of the Implementation Program Amendment for the City of San Diego Implementation Plan Amendment No. 2-04A, as submitted.*

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AS SUBMITTED:

The Commission hereby denies certification of **Part A of the Implementation Program Amendment submitted for City of San Diego LCP Amendment No. 2-04A**, and adopts the findings set forth below on grounds that Part A of the Implementation Program as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plans. Certification of the Implementation Program would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program as submitted

- II. **MOTION II:** *I move that the Commission certify Part A of the Implementation Program Amendment for the City of San Diego LCP Amendment No. 2-04A, if it is modified as suggested in this staff report.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in certification of Part A of the Implementation Program Amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM
AMENDMENT WITH SUGGESTED MODIFICATIONS:**

The Commission hereby certifies **Part A of the Implementation Program Amendment for the City of San Diego** if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program Amendment, with the suggested modifications, conforms with and is adequate to carryout the certified Land Use Plans. Certification of the Implementation Program Amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

III. MOTION: *I move that the Commission reject Part B of the Implementation Program Amendment for the City of San Diego LCP Amendment No. 2-04, as submitted.*

STAFF RECOMMENDATION OF CERTIFICATION AS SUBMITTED:

Staff recommends a **NO** vote. Failure of this motion will result in certification of Part B of the Implementation Program Amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO CERTIFY IMPLEMENTATION PROGRAM AMENDMENT
AS SUBMITTED:**

The Commission hereby certifies **Part B of the Implementation Program Amendment for the City of San Diego LCP Amendment No. 2-04A** as submitted and adopts the findings set forth below on grounds that the Implementation Program Amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan, and certification of the Implementation Program Amendment will meet the requirements of the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Program.

PART II. SUGGESTED MODIFICATIONS

Staff recommends the following suggested revisions to the proposed Implementation Plan be adopted. The **underlined** (in bold print) sections represent language that the Commission suggests be added from the language as originally submitted. Underlined sections represent the new language the City is adding to the Land Development Code.

1. Add the following to Section 131.0466 Deviations from Development Regulations for Reasonable Accommodations (c) and (d) as subsection (5):

131.0466 (c)

... (5) For coastal development in the coastal overlay zone, there is no feasible alternative that provides greater consistency with the certified Local Coastal Program.

131.0466 (d)

... (5) For coastal development in the coastal overlay zone, there is no feasible alternative that provides greater consistency with the certified Local Coastal Program.

2. Add the following to Section 126.0504 Findings for Site Development Permit Approval (n) Supplemental Findings – *Public Right-of-Way* Encroachments as subsection (5):

(5) For coastal development in the coastal overlay zone, the encroachment is consistent with Section 132.0403 (Supplemental Use Regulations of the Coastal Overlay Zone).

PART III. FINDINGS FOR REJECTION OF PART A OF THE CITY OF SAN DIEGO IMPLEMENTATION PLAN AMENDMENT #2-04A, AND APPROVAL, IF MODIFIED

A. AMENDMENT DESCRIPTION. The proposed amendment contains two components that cannot be supported as submitted which will comprise Part A for purposes of this report, Commission motions and resolutions of approval. These include the creation of a deviation process to allow persons with disabilities the equal opportunity to use and enjoy a dwelling unit; and changes to the the permit requirements for public right-of-way improvements.

1. Deviations for Reasonable Accommodation. The proposed changes to the development regulations to accommodate persons with disabilities in the housing sector would allow deviations from the following regulations through a Process One building permit:

- 1) minimum setback requirements;
- 2) minimum parking requirements; and
- 3) minimum floor area ratio (FAR) requirements for deviations less than or equal to five percent.

Deviations from the following regulations may be permitted with a Neighborhood Development Permit decided in accordance with Process Two.

- 1) Minimum FAR requirements for deviations greater than 5 percent, but no greater than 10 percent;
- 2) Angled building envelope plane requirements, not to exceed a maximum structure height of 30 feet;
- 3) Accessory structure requirements.

This will permit flexibility in the design of a dwelling unit necessary to accommodate a disabled person. For example, changes to the building design will be permitted to improve ingress and egress of a building to accommodate wheelchairs or special parking needs for accessible vans, etc.

2. Public Right-of-Way Improvements. The proposed revisions are meant to clarify the permit process for improvements in the right-of-way and standards for the approval process for such improvements. Currently, Chapter 6 (not part of the certified LC) addresses the controls and protection of street planting in the public right-of-way. The Park and Recreation Department exercises jurisdiction and control over planting, maintenance, care and removal of trees, or plants in all streets or other public rights-of-way of the City. Also, a Public Right-of-Way Permit is currently required for the planting of any tree, shrub, or plant greater than 30 inches in height or for trimming of trees in the right-of-way from the Development Services Department. However, the City did not intend to require duplicative permits for landscape improvements in the public right-of-way (both from the City Development Services Department as well as from the Park and Recreation Department). Therefore, through the proposed amendment, revisions will be made such that applicants are required to obtain only one permit for landscape improvements in the right-of-way, that being either a Street Tree Permit from Park and Recreation or a Public Right-of-Way Permit from the Development Services Department. In addition, there are other landscape requirements contained in Section 142.0409 of the Land Development Code. The City is not proposing changes to this section of the Code.

In addition, the City proposes to incorporate standards into the Public Right-Of-Way Permit regulations (not part of the LCP) to determine whether or not to approve an encroachment in the right-of-way through Process One. These standards require that 1) there is no present public use for the right-of-way; 2) that the encroachment is consistent with the underlying zone; and 3) that the proposed encroachment is three feet or less in height.

Within the LCP, the City proposes to add a section to both the Neighborhood Development Permit regulations and the Site Development Permit regulations as follows:

Proposed Section 126.0402 (k)

A Neighborhood Development Permit is required for construction of a privately owned structure proposed in the public right-of-way dedicated for a street or an alley, where the applicant is the record owner of the underlying fee title as described in Sections 129.0710(a)(b)92).

Proposed Section 125.0504 (n)

Supplemental Findings – Public Right-Of-Way Encroachments

A Site Development Permit in accordance with Section 126.0502(d)(6) for any encroachment or object which is erected, placed, constructed, established or maintained in the public right-of-way when the applicant is not the record owner of the property on which the proposed encroachment will be located may be approved or conditionally approved only if the decision maker makes the following supplemental findings in addition to the findings in Section 126.0504(a):

- (1) The proposed encroachment is reasonably related to public travel, or benefits a public purpose, or all record owners have given the applicant written permission to maintain the encroachment on their property;
- (2) The proposed encroachment does not interfere with the free and unobstructed use of the public right-of-way for public travel;
- (3) The proposed encroachment will not adversely affect the aesthetic character of the community;
- (4) The proposed encroachment does not violate any other Municipal Code provisions or other local, state or federal law.

Through the proposed revisions to the LDC, the Public Right-Of-Way Use Permit regulations would be deleted and replaced by the Public Right-Of-Way Permit regulations (not part of the LCP) and the above sections referencing when a NDP and SDP is required for improvements in the public right-of-way.

Only the two components addressing Reasonable Accommodation and Public Right-Of-Way Improvements are addressed in Part A. The remainder of the LCP submittal consists of several minor corrections/revisions/clean-up that do not raise any coastal issues. These latter revisions (Part B) can be supported as submitted and are detailed in Section IV of the staff report.

3. City Permit Process pursuant to the LDC. Section 112.0103 of the City of San Diego's Land Development Code identifies the processing and review requirements when more than one permit of approval is required. It states:

When an applicant applies for more than one permit, map or other approval for a single development, the applications shall be consolidated for processing and shall be reviewed by a single decision maker. The decision maker shall act on the consolidated application at the highest level of authority for the development as set forth in Section 111.0105. The findings required for approval of each permit shall be considered individually, consistent with Section 126.0105.

Section 126.0105 states:

An application for a development permit may be approved only if the decision maker determines that the development, as proposed or as conditioned, meets all findings for all required permits as provided in Chapter 12, Article 6, Divisions 2 through 8. If the decision maker determines that any of the findings are not met, the application shall be denied. The decision maker shall record the decision in writing and shall specify the evidence or statements presented that support the findings.

Throughout the LDC there is specific reference to the SDP and NDP processes that apply City-wide; however, the coastal development permit (CDP) requirement is only specifically addressed in the CDP regulations commencing with Section 126.0701. It is through the CDP process that all policies of the applicable certified LCP land use plans and the implementing ordinances, including the LDC and Planned District Ordinances (PDOs) are applied.

In addition, the City has several process levels for permits. These include:

Process One: a permit, map or other matter that may be approved or denied by a staff person. No public hearing is required.

Process Two: a permit, map or other matter may be approved, conditionally approved or denied by a staff person. No public hearing is required. However, an appeal hearing is available upon request.

Process Two Appeals: The Planning Commission shall hear appeals of Process Two decisions subject to several requirements (who can appeal, timing for appeals, scheduling of appeals, etc.).

Process Three: a permit, map or other matter may be approved, conditionally approved or denied by a hearing officer.

Process Three Appeals: a permit, map or other matter approved by the Hearing Officer may be appealed to the Planning Commission.

Process Four – a permit, map or other matter may be approved, conditionally approved or denied by the Planning Commission.

Process Five - a permit, map or other matter may be approved, conditionally approved or denied by the City Council.

The above processes are explained in more detail in Sections 112.0501 through 112.0507 of the LDC and shown on Exhibit 6.

B. SPECIFIC FINDINGS FOR REJECTION

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP.

1. Applicable Land Use Plan Policies. Each community plan or LCP Land Use Plan contains policies that protect public views, scenic resources, public access, recreation and sensitive coastal resources including, but not limited to, beaches, bluffs, slopes, hillsides and environmentally sensitive lands in that community. The Commission's review of the proposed changes to the Land Development Code must assure that a Coastal Development Permit is required and that development is approved only when consistent with the certified LCP. Listed below are typical policies contained in the certified Land Use Plan segments in the Coastal Overlay Zone for the City of San Diego which generally protects the above-described resources, including policies addressing preservation of community character as well as removal of landscaping in public rights-of-way, that blocks public views to the ocean, etc.

La Jolla LCP Land Use Plan

- The City shall maintain, and where feasible, enhance and restore existing parking areas, public stairways, pathways and railings along the shoreline to preserve vertical access (to the beach and coast), to allow lateral access (along the shore), and to increase public safety at the beach and shoreline areas. No encroachment into the public right-of-way should be permitted within the Coastal Zone without a permit. (pg. 52)
- Protect public views to and along the shoreline as well as to all designated open space areas and scenic resources from public vantage points as identified in Figure 9 and Appendix G (Coastal Access Subarea maps). Public views to the ocean along public streets are identified in Appendix G. Design and site proposed development that may affect an existing or potential public view to be protected, as identified in Figure 9 or in Appendix G, in such a manner as to preserve, enhance or restore the designated view opportunities. (pg. 56)
- Where existing streets serve as public vantage points, as identified in Figure 9 and Appendix G including, but not limited to, view corridors and scenic overlooks and their associated viewsheds, set back and terrace development on corner lots and/or away from the street in order to preserve and enhance the public view provided from the public vantage point to and along the ocean. In review of variances or

other requests for reduced setbacks within the viewshed public vantage points, adjacent to identified view corridors or on property between the ocean and first coastal roadway, do not allow any reduction in the public view provided to and along the ocean. Figure 9 and Appendix G list streets that provide identified public views to and along the ocean to be protected from visual obstruction. (pg. 56)

- Plant and maintain landscaping or vegetation so that it does not obstruct public views of coastal resources from identified public vantage points as identified in Figure 9. (pg. 57)
- Where new development is proposed on property that lies between the shoreline and the first public roadway, preserve, enhance or restore existing or potential view corridors within the yards and setbacks by adhering to setback regulations that cumulatively, with the adjacent property, form functional view corridors and prevent an appearance of the public right-of-way being walled off from the ocean. (pg. 57)
- Maintain or, if necessary, remove, modify or relocate landscaping on City-owned land and easements, and public right-of-way, to preserve, enhance, or restore identified public physical and/or visual access to the ocean. (pg. 59)
- Require that all proposed development maintain and enhance public access to the coast by providing adequate parking per the Coastal Parking regulations of the Land Development Code. This required parking includes higher parking ratios for multiple-dwelling units in the Beach Impact Areas, as well as the required prohibition of curb cuts where there is alley access, in order to retain and enhance publicly-accessible street parking for beach visitors. (pg. 74)
- All unauthorized encroachments into the public right-of-way should be removed or an Encroachment Removal Agreement (ERA) should be obtained. (pg. 86)
- In order to maintain and enhance the existing neighborhood character and ambiance, and to promote good design and visual harmony in the transitions between new and existing structures, preserve the following elements:
 - 1) Bulk and scale – with regard to surrounding structures or land form conditions as viewed from the public right-of-way and from parks and open space; (pg. 90)

Mission Beach Precise Plan and Local Coastal Program Addendum

- Under the Local Coastal Program, the following specific concept for future implementation technique development is set out in regard to community landscaping:

- o Views to and along the shoreline from Public areas shall be protected from blockage by development and or vegetation.

Peninsula Community Plan and Local Coastal Program Addendum

- This Plan does not recommend creation of new industrial areas in Peninsula and no industrial areas currently exist in the community outside of the naval and port district lands. Due to the fully built up character of Peninsula and limited transportaion access, this community cannot contribute to the industrial land base recommended for the City in the General Plan. (pg. 16)
- Maintain and encourage continued development of the commercial fishing and marine related commercial land uses within Peninsula. (pg. 44)
- Public access to the bay and ocean should be provided to the maximum extent feasible consistent with resource protection, protection of private property rights, public safety and size of beaches. (pg. 76)
- Preserve and enhance significant views of the bay and ocean. (pg. 108)

Ocean Beach Precise Plan

- o That public access to beaches and the shoreline be protected, first by clearly establishing public access and use rights, and second by requiring new developments to provide visual and physical access. (pg. 42)
- o That views available from elevated areas and those adjacent to the beaches and ocean be preserved and enhanced wherever possible. (pg. 83)
- o That street trees be located so as not to block views upon maturity and to complement the surrounding area.

2. Reasonable Accommodations - Section 131.0466 and Section 126.0402(j)

a) Purpose and Intent of the Ordinance. The purpose and intent of the ordinance is to make reasonable accommodations in the zoning laws and other land use regulations to afford persons with disabilities the equal opportunity to use and enjoy a dwelling.

b) Major Provisions of the Ordinance. The major provisions of the ordinance would create a deviation process to modify existing residential development standards in circumstances where development regulations would preclude reasonable accommodation of a dwelling for persons with disabilities. The proposed changes would allow deviations to 1) the required minimum setbacks, 2) minimum parking requirements, or 3) maximum floor area ratio (FAR) up to five percent through a Process One decision. This means proposed structures may encroach into the required building setbacks, provide less on-site parking than is required (i.e., one space instead of two) or

exceed the required floor area ratio. This will permit flexibility in the design of a dwelling unit necessary to accommodate a disabled person such as changes to the ingress and egress of a building to allow more room for wheelchairs or special parking needs for accessible vans, etc.

Additional deviations could be requested through a Neighborhood Development Permit (NDP) (Process Two), which would require notification to the surrounding neighbors. Deviations that could be requested through a NDP would include 1) additional floor area ratio greater than 5% not to exceed 10%, 2) encroachments into the angled building envelope plane requirements or from the 3) accessory structure requirements. More specifically, exceptions could be made to the minimum floor area ratio requirements such that deviations could be granted greater than 5% but not more than 10 percent. Also, the angled building envelope plane requirements could be exceeded as long as the maximum structure height does not exceed 30 feet. Lastly, deviations to the requirements for accessory structures could also be granted such as the size or use of such structures.

Deviations from the above development regulations may be approved subject to the following:

- 1) The development will be used by a disabled person;
- 2) The deviation request is the minimum necessary to make specific housing available to a disabled person and complies with all applicable development regulations to the maximum extent feasible;
- 3) The deviation request will not impose an undue financial or administrative burden on the City;
- 4) The deviation request will not create a fundamental alteration in the implementation of the City's zoning regulations;
- 5) The deviation will not adversely affect surrounding uses.

The determination of what is reasonable depends on two factors: 1) whether or not the request imposes an undue burden or expense on the local government and, 2) whether or not the proposed use creates a fundamental alteration of the zoning program. If the answer is yes to both, then the requested accommodation is considered "unreasonable". The City cites an example in its staff report that states, if a person with a disability requests the City to waive the requirement for a side yard setback in a single family zone in order to build a ramp to the front door, such a request would not cause an undue burden or expense to the City nor would it alter the fundamental character of the neighborhood. Conversely, if the request required that the City build a new road or extend utilities to a property at great public expenditure, the request would pose an undue financial burden on the City and, therefore, would be considered unreasonable.

c) Adequacy of the Ordinance to Implement the Certified LUP. The City found the proposed language to accommodate individuals with disabilities in the housing market will create a City that is accessible to all people who live and work in it. Only two other cities in California to date have adopted such ordinances and these include the City of

Long Beach and San Jose. The Commission approved LCP Amendment No. 3-99 for the City of Long Beach in August 2000. While there is no limit or cap to the number of dwelling units that may be modified to accommodate disabled persons, there is a slight potential that through the granting of a deviation to a development regulation, particularly in the Coastal Zone Overlay, potential impacts to coastal resources may occur.

For example, as in the example that the City cited above, there is the potential that through the reduction to a building setback for purposes of building a ramp or to create a structure with a greater F.A.R. on a lot located between the first public road and sea, that a public view of the ocean may be blocked. If such view is designated and protected in a certified Land Use Plan, as proposed, there is no requirement to consider alternatives to the building design or to choose the alternative that has the least impact on the coastal resources.

Other potential impacts to coastal resources could result from a proposed structure exceeding the Floor Area Ratio (F.A.R.) to accommodate wheelchairs or handicapped accessible vans or elevators for handicapped individuals which could result in either a structure being out of character with the community, or encroachment into a public view corridor blocking public views of the ocean. Other potential impacts could result from a building design that results in a reduction to the on-site parking requirements on a property located between the first coastal road and sea where beach parking is in more critical demand (Beach Impact Area), resulting in usurpation of street parking that is typically reserved for beach visitors. In addition, a potential impact could result from a reduction to yard area setbacks providing public views, if the property is located adjacent to a designated public view corridor or next to a public boardwalk (such as in the Mission Beach community).

As proposed, the City is requiring that the development must comply with all applicable development regulations to the maximum extent possible and that the deviation be the minimum necessary to achieve the desired goal. However, the new regulations only refer to the Neighborhood Development Permit as a potential discretionary approval that may be required, and suggest some deviations could be granted through a building permit alone. However, in the coastal overlay zone, all development requires a coastal development permit which requires the development be reviewed as to its conformity with the certified LCP land use plans and implementing ordinances. The language, as proposed, does not make this requirement clear and, in fact, with only a reference to development regulations, the language creates an opportunity to overlook the provisions of the certified land use plans when considering how reasonable accommodation can be provided. For development in the coastal zone, such deviations should take into consideration any coastal issues that may be raised by the proposal. Therefore, absent any provisions in the code language to require that alternatives be considered that have the *least* impact on coastal resources, the Commission finds the subject proposal is not adequate to carry out the certified land use plans as submitted, and must be denied.

Approval if Modified

Suggested Modification #1 requires that a request for reasonable accommodation will be granted if, in addition to the requirements that must be met as proposed by the City, that the decision maker find there are no feasible alternatives for providing reasonable accommodation at the property that would provide greater consistency with the certified Local Coastal Program. This suggested modification is similar to the modification suggested by the Commission in its action on the City of Long Beach LCP amendment and will assure the certified LCP land use plans as well as applicable development regulations will be considered, and the deviation with the least impact on coastal resources chosen. If modified as suggested, the Commission can certify the reasonable accommodation permit process as part of the LCP implementing ordinances to establish an orderly and fair process for disabled persons that ensures equal access to housing, as in conformance with, and adequate to carry out, the provisions of the certified LUPs.

2. Public Right-Of-Way Improvements

Section 126.0402 (k) and 126.0504 (n) NDP and SDP Required

Section 129.0702 Public Right-of-Way Permit Review (not part of LCP)

a) Purpose and Intent of the Ordinance. The purpose and intent of the Site Development Permit procedures are to establish a review process for proposed development that, because of its site, location, size or some other characteristics, may have significant impacts on resources or the surrounding areas, even if developed in conformance with all regulations. The intent of these procedures is to apply site-specific conditions as necessary to assure that the development does not adversely affect the applicable land use plan and to help ensure that all regulations are met.

The purpose and intent of the Neighborhood Development Permit procedures are to establish a review process for development that propose new uses, changes to existing uses, or expansions of existing uses that could have limited impacts on the surrounding properties. The intent of these procedures is to determine if the development complies with all applicable regulations of the zone and any supplemental regulations pertaining to its uses, and to apply conditions that may be necessary to help ensure compliance.

The purpose of the Public Right-of-Way Permit Procedures is to establish the process for review of public right-of-way permit applications for compliance with the regulations set forth in the LDC and to protect the public health, safety and welfare. The Public Right-Of-Way Permit Procedures are not currently part of the certified LCP and are not proposed by the City to be part of the LCP with this LCP amendment.

The purpose and intent of the Public Right-Of-Way Use Permit regulations (to be deleted) is to establish the process for approval of encroachments in the public right of way when the applicant is not the record owner of the property on which the proposed encroachment will be located.

b) Major Provisions of the Ordinance. The major provisions of the Site Development Permit and Neighborhood Development Permit processes include the following:

- When a site or neighborhood development permit is required
- Different process levels of review
- Findings for the permit
- Supplemental findings depending on what is being proposed
- Violations of a development permit

The major provisions for the Right-of-Way permit procedures include:

- When such a permit is required
- Exemptions from requirement for a public right-of-way permit
- Decision process for a right-of-way permit, etc.

c) Adequacy to Carry Out the Land Use Plans. The City has indicated the goal of the proposed LDC amendment is to clarify the permit review and approval process by consolidating the information in the LDC, because the existing public right-of-way approval process is unclear regarding permits required and standards to be applied. The proposed LCP amendment would create a discretionary review for privately-owned structures within the right-of-way including a Process Four level decision Site Development Permit (SDP) and Process Two level decision Neighborhood Development Permit (NDP) depending on the owner of the underlying land, prior to the issuance of the Public Right-of-Way Permit.

The City has described situations where an applicant proposes a right-of-way encroachment and is not the record owner of the underlying fee title. A Right-of-Way Use Permit is currently required in accordance with Process Four. However, the City feels requests for private encroachments in the right-of-way constitute development and should be processed as a development permit as opposed to a use permit. Therefore, the City proposes to reclassify the Right-of-Way Use Permit as a Process Four Site Development Permit. In so doing, the existing public Right-of-Way Use Permit procedures would be repealed and some of the information would be transferred into the Site Development Permit section of the LDC, and some to the Public Right-of-Way Permit regulations. Currently, the Site Development Permit and Right-of-Way Use regulations are part of the certified LCP, but the Public Right-of-Way Permit regulations are not.

The City has also indicated that prior to implementation of the Land Development Code, the City municipal code prohibited fences and walls in the public right-of-way. Subsequently, the City approved an amendment to the Code to allow some encroachments such as fences and walls through a Process Two permit. However, the amendment did not include the necessary changes to the LDC to clarify that the Process Two permit should be processed as a Neighborhood Development Permit. This is addressed in the subject proposal in the Neighborhood Development Permit regulations and the Public Right-Of-Way Permit regulations.

With the proposed modifications, all development in the public right-of-way will still be required to process an Encroachment Maintenance and Removal Agreement (EMRA) in addition to the applicable Public Right-of-Way Permit (Process Four SDP, Process Two NDP, and/or Process One Right-of-Way Permit). The information regarding the EMRA process will be transferred from Section 62.0302 and clarified in proposed Section 129.0715 (not part of the LCP currently or proposed).

The Coastal Act concern regarding development within public street right-of-ways primarily relates to potential impacts to public views and public access. Often times, undeveloped street-ends provide the only meaningful views toward the ocean between a wall of development on the intervening private parcels. In addition, they are often used for access to and along the shoreline. Therefore, the certified LCP should include clear standards applicable to any structures or landscaping proposed in these areas. As stated previously, street-ends are often designated as a public view or access corridors to be protected in a certified Land Use Plans. Specifically, the La Jolla Land Use Plan and Mission Beach LCP Land Use Plan contain policies that address protection of public views to the ocean and along designated public view corridors. Some require removal of landscaping that obstructs public views to the ocean as a community goal in the LUP. These policies include, but are not limited to:

- Maintain or, if necessary, remove, modify or relocate landscaping on City-owned land and easements, and public right-of-way, to preserve, enhance, or restore identified public physical and/or visual access to the ocean. (pg. 59/La Jolla LUP)
- All unauthorized encroachments into the public right-of-way should be removed or an Encroachment Removal Agreement (ERA) should be obtained. (pg. 86/La Jolla LUP)
- o Views to and along the shoreline from Public areas shall be protected from blockage by development and or vegetation. (pg. 14/Mission Beach LCP Land Use Plan)

The City is proposing to modify the procedures and the permit process for street right-of-way improvements (which includes installation of landscaping, fencing, walls, etc.); however, in doing so, it is not clear that a coastal development permit is also required for development in the right-of-way in the coastal overlay zone. Given the changes being made to the LCP to clarify the permit process and applicable standards, and the strong policy language contained in many certified land use plans that protect the right-of-ways as public view and access corridors, it seems appropriate to acknowledge those requirements with this action. However, the new regulations refer only to the Site and Neighborhood Development Permit as a potential discretionary approval that may be required, and suggest some improvements in the right-of-way may require only a Public Right-of -Way permit which would not be applicable through the coastal development permit process, because they are not part of the certified LCP. Some of the standards that

are in those regulations were previously in the Right-of -Way Use regulations which were part of the LCP but are proposed to be repealed.

As stated, in the coastal overlay zone, all development requires a coastal development permit which requires the development be reviewed as to its conformity with the certified LCP land use plans and implementing ordinances. The language, as proposed, does not make this requirement clear and, in fact, with only a reference to the SDP, NDP and Public Right-of -Way permits, the language creates an opportunity to overlook the provisions of the certified LCPs when considering improvements within right-of-ways. Unlike construction of a residence, it would be easier to assume accessory structures or landscaping within an adjacent right-of-way, particularly when other permits are specifically cited, would not require another discretionary CDP. There is also no language that specifically addresses removal of non-conforming structures or landscaping within existing right-of-ways.

For development in the coastal zone, there are specific supplemental regulations (Section 132.0403 attached as Exhibit No. 5) that address public view protection for property between the first coastal roadway and the sea which should be specifically considered and applied. Since these proposed revisions are intended to clarify permit requirements, this is the opportunity to acknowledge the coastal development permit requirement and applicable regulations for development in public right-of-ways in the coastal zone. The Commission finds, without the proposed modifications, the subject proposal is not adequate to carry out the certified land use plans as submitted, and must be denied.

Approval If Modified

Suggested Modification #2 would add to the supplemental findings required for a Site Development Permit required for a public right-of-way encroachment. It specifically requires that development in the coastal zone requiring a coastal development permit must be consistent with Section 132.0403, the Supplemental Use Regulations of the Coastal Overlay Zone. Given the Public Right-of -Way Permit regulations are not part of the certified LCP, the Commission is limited as to where to suggest modifications that would address the coastal issues associated with development in the right-of-ways. The referenced supplemental regulations for the coastal zone were added by the Commission to the LDC to implement the view protection policies of the certified land use plans mentioned above. They address specific requirements to preserve, enhance or restore a designated public view and that such views are maintained and enhanced, when possible. A specific reference to the standards in these regulations for development requiring both a coastal development permit and a right-of-way permit, will assure no improvements are permitted that would adversely impact existing public views of the ocean, and that such views are enhanced when possible. With this modification, the Commission finds the proposed revisions to the LDC adequate to carry out the view and access protection policies of the certified land use plans.

PART IV. FINDINGS FOR APPROVAL OF PART B OF THE CITY OF SAN DIEGO IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED

A. PART B - AMENDMENT DESCRIPTION

The City has submitted a number of amendments, which include changes to several different ordinances of the certified Land Development Code (LDC). The LDC applies citywide, and thus covers many areas not within the coastal zone. The ordinance revisions described in this report are part of a larger submittal which includes miscellaneous changes to the regulations in the LDC for different kinds of projects (i.e., dissolution of Boarding Zone of Appeals, public linear trails and public maintenance access projects, emergency restoration regulations, etc.). None of these proposed changes results in impacts to coastal issues and can be approved, as submitted.

B. Typical LUP Policies addressing Coastal Resources

As noted in the findings for rejection of a portion of the LCP submittal, each community plan or LCP Land Use Plan contains policies that protect coastal resources. The Commission's review of the proposed changes to the Land Development Code must assure that a Coastal Development Permit is required for all development in the coastal zone and that development is approved only when consistent with the certified LCP.

1. Section 131.0231 Open Space Residential Zone Category

a) Purpose and Intent of the Ordinance. The purpose of the OR zones is to preserve privately owned property that is designated as open space in a land use plan for such purposes as preservation of public health and safety, visual quality, sensitive biological resources, steep hillsides, and control of urban form, while retaining private development potential. These zones are also intended to help implement the habitat preservation goals of the City and the MHPA by applying development restrictions to lands wholly or partially within the boundaries of the MHPA. Development in these zones will be limited to help preserve the natural resource values and open space character of the land.

b) Major Provisions of the Ordinance. The ordinance includes the following major provisions:

- Development regulations
- Maximum permitted density
- Minimum lot area
- Allowable development area
- Lot width

c) Adequacy of the Ordinance to Implement the Certified LUP Segments. There are several urbanized communities in the city (i.e., La Jolla in the coastal zone) with existing residential development located near canyons. These properties often have split land use designations within their respective community plans. The intent is to preserve

community open space near residential designated areas. Some of these community open spaces areas do not have natural steep slopes or sensitive vegetation that would be protected under the Environmental Sensitivity Lands regulations but they are still designated as open space to provide open space within the community along canyon slopes and to preserve the open space character of the land.

It has been determined by the City that the OR zone development standards do not adequately address the narrow lots in urbanized communities where the zones were intended to be applied. The required setbacks are too wide and the maximum floor area ratio (FAR) requirement is too low to allow for reasonable development. As noted in the City's staff report, for example, the existing OR-1-1 zone requires 20-foot side yard setbacks which would make the building envelope only 10 ft. x 50 ft. wide. This would result in forcing development closer to the community open space rather than clustering the development in the most suitable area of the premises. The proposed amendment will allow for reasonable development of the applicable privately owned lots (limited to a maximum development area of 25 percent of the premises) and better implement the protection of community open space.

The City is proposing to modify the setbacks and FAR to be more consistent with the requirements of the residential zones while still maintaining the protection of open space in accordance with the purpose and intent of the OR zones. For example, lots in the OR zone will still be limited to a maximum 25 percent developable area of the entire site. The minimum front and rear setbacks would be reduced from 25 to 15 feet and the minimum side setbacks would be reduced from 20 feet to 8 feet. The maximum FAR would increase from 0.10 to 0.45. The maximum lot coverage requirement of 10 percent would be eliminated. However, all other development regulations would remain unchanged. As such, the Commission finds the proposed amendment consistent with, and adequate to carry out, the policies of the City's LUP segments.

2. Section 111.0203 Board of Zoning Appeals

a) Purpose and Intent of the Ordinance. This section is found under the General Rules and Authority section of the Land Development Code including Land Development Authorities and Advisory Boards. It describes the authority of the City Council, Planning Commission, Board of Zoning Appeals (BZA), Hearing Officer, City Staff, Historical Resources Board, etc.

b) Major Provisions of the Ordinance. This ordinance citation addresses the various aspects of the Board of Zoning Appeals. It includes:

- Authority
- Appointment and Terms
- Meeting
- Powers and Duties

c) Adequacy of the Ordinance to Implement the Certified LUP Segments. The Board of Zoning Appeals was originally established in 1952 to act on appeals of the Hearing Officer's decisions, which included decisions on Variances, Conditional Use Permits and other special permits. The Board consists of five members. During the LDC updated process it was decided that due to the changes in decision levels on some permits and the consolidation of processing under the LDC, the City determined that the BZA would only hear and determine appeals of general relief variances.

The City has since found that after implementation of the LDC in 2000, that the Board has only met about one time a year due to the infrequency of variance appeals. The Board itself did not want to disband and suggested that they assume additional responsibilities such as those that are currently reviewed by the Planning Commission. There are no coastal issues raised by the proposed amendment and the CDP process will not be significantly affected. However, the City found that due to many factors as enumerated above (low volume of items heard, continuation of this trend) that it was unlikely that the Board will be necessary. As such, the City, through this proposed amendment, proposes the dissolution of the Board of Zoning Appeals and transfers the powers and duties of it to the Planning Commission. As such, the Commission finds the proposed amendment consistent with, and adequate to carry out, the policies of the City's LUP segments.

3. Site Reconnaissance and Testing and Minor Amendments to Address Illegal Grading

Section 121.0312 Restoration and Mitigation as a Remedy

Section 126.0402 When a Neighborhood Permit is Required

Section 129.0112 Responsibilities of Permittee of Authorized Agent Regarding Inspections

Section 129.0214 Requirements for Approved Plans

a) Purpose and Intent of the Ordinance. This section of the LDC is found under the section addressing general information and required review and enforcement procedures. The purpose of the division is to require compliance with the Land Development Code, to state what activities violate the Land Development Code and to establish general remedies for these violations.

b) Major Provisions of the Ordinance. The major provisions of the ordinance require compliance with the LDC, procedures for issuing stop work orders, remedies, and restoration and mitigation as a remedy, etc.

c) Adequacy to Implement the Certified LUP Segments. The City proposes to amend the LDC to add language that would further restrict grading in the community plan open space areas and to also create a Process One grading permit for site reconnaissance work. It was found that in order to prepare the required technical studies to obtain a development permit, an applicant must conduct site reconnaissance for the purpose of basic data collection or resource evaluation. This information is used for site

design to prepare required environmental studies, geotechnical reports, and historic site surveys. Site reconnaissance and testing were exempt from permits under the code in effect prior to January 1, 2000 but were not addressed with the adoption of the LDC on that date. Under the LDC, any disturbance of land would be considered “development” therefore, an applicant conducting a site reconnaissance or testing on a site containing Environmentally Sensitive Lands would be required to obtain a Site Development Permit. Then upon completion of the reconnaissance and testing, a second SDP would be required to request approval of the actual development project.

According to the City, this has become costly and time-consuming for permit applicants. There were situations also where applicants did not obtain the required SDP to perform site reconnaissance work or due to the lack of coordination with City, resulted in unmitigated impacts to biological resources. The proposed amendments to the code will ensure that the work involved in the testing is the minimum necessary to accomplish the exploration, survey or testing and that any impacts are mitigated in conformance with the City’s LDC. As such, a Neighborhood Development Permit (Process Two) for reconnaissance and testing on a site that contains ESL will be required. Through the proposed amendment, the City would permit site reconnaissance and testing with a Process One grading permit provided the applicant mitigates any impacts to sensitive biological or historical resources in conformance with the City’s regulations. An engineering bond would also be required to ensure revegetation of disturbed areas. Also required is on-site biological monitoring and cultural resource monitoring while testing is performed to avoid or minimize impacts to resources. Process One means an application of a permit, map, or other matter acted upon in accordance with Process One may be approved or denied by a staff person designated by the City Manager pursuant to the Land Development Code. A public hearing is not required for projects processed under Process One.

In addition, the proposed amendments would require that any grading done without a permit will be required to be restored prior to any other permit being processed and that all impacts that occurred as part of an emergency be restored in conformance with the City’s Biology Guidelines. As such, the Commission finds the proposed amendment consistent with, and adequate to carry out, the policies of the City’s LUP segments.

4. Public Linear Trails and Public Maintenance Access Projects

Section 143.0111 Limited Exceptions from Environmentally Sensitive Lands Regulations

a) Purpose and Intent of the Ordinance. This section is under the Environmentally Sensitive Lands regulations. The purpose of these regulations is to protect, preserve and, where damaged restore, the environmentally sensitive lands of San Diego and the viability of the species supported by those lands. These regulations are intended to assure that development, including, but not limited to coastal development in the Coastal Overlay Zone, occurs in a manner that protects the overall quality of the resources and the natural and topographic character of the area, encourages a sensitive form of development, retains biodiversity and interconnected habitats, maximizes physical and

visual public access to and along the shoreline, and reduces hazards due to flooding in specific areas while minimizing the need for construction of flood control facilities. These regulations are intended to protect the public health, safety, and welfare while employing regulations that are consistent with sound resource conservation principles and the rights of private property owners.

It is further intended for the Development Regulation for Environmentally Sensitive Lands and accompanying Biology, Steep Hillside, and Coastal Bluffs and Beaches Guidelines to serve as standards for the determination of impacts and mitigation under the California Environmental Quality Act and the California Coastal Act.

b) Major Provisions of the Ordinance. The ordinance includes, but is not limited to the following provisions:

- When the ESL regs apply
- Uses allowed within environmentally sensitive lands general development regulations for ESL lands including sensitive biological resources, steep hillsides, sensitive coastal bluffs, coastal beaches, and floodplains.

c) Adequacy of the Ordinance to Implement the Certified LUP Segments.

Through the Site Development Permit and Coastal Development Permit process, the applicant is required to locate and quantify each environmentally sensitive resource and quantify the proposed encroachment into ESL with a breakdown for each individual premises in the project application. This has become very cumbersome for public trail and maintenance access projects that are located across multiple large properties that have varying types of ESL. Public agencies such as the Joint Powers Authority, County Water Authority, and North County Transit District and City Departments such as Engineering and Capital projects, Metro Wastewater, Park and Recreation and Water have had to expend large amount of time and money to perform this documentation to demonstrate that they do not exceed 25 percent development area restrictions.

The City has found that no linear trail or public access project processed under the regulations of the OR zone or ESL has ever come close to exceeding the development area restriction. For this reason, the City proposes through this amendment to render public linear trails and public maintenance access projects exempt from the requirements to inventory the entire premises for sensitive biological resources and steep hillsides. These kinds of public projects would still be required to obtain a Site Development Permit (Process Three), substantiate that the public trail or access path impacts the least amount of environmentally sensitive lands, provides full mitigation of any impacts to environmentally sensitive lands, and be in compliance with CEQA. As such, the Commission finds the proposed amendment consistent with, and adequate to carry out, the policies of the City's LUP segments.

5. Emergency Restoration Regulations- Section143.0126

a) Purpose and Intent of the Ordinance. (Same as above)

b) Major Provisions of the Ordinance. (Same as above)

c) Adequacy of the Ordinance to Implement the Certified LUP Segments. As part of the Environmentally Sensitive Lands (ESL) regulations, existing Section 143.0126 requires that whenever development activity within ESL is deemed necessary by order of the City Manager to protect the public health or safety, the City Manager may authorize, without a public hearing, the minimum amount of impact necessary to protect the public health or safety subject to three criteria. These include that a) if the emergency work involves temporary impacts to ESL, a Neighborhood Development Permit or Site Development permit is not required provided the ESL is restored to its natural state. The existing regulations also require that the work be completed within 60 days of the emergency work; b) If the work results in permanent impacts to ESL, a Neighborhood Development Permit or Site Development Permit is required. An application for either permit is required to be submitted to the City within 60 days of completion of the emergency work; c) In the Coastal Overlay Zone, a coastal development permit is required for any emergency work in accordance with other provisions of the LDC.

Through the proposed amendment, additional language will be added to the Land Development Code addressing emergency work such that any required restoration work be completed in a timely manner. Although the LDC currently requires that the applicant apply for either a Neighborhood Development Permit or a Site Development Permit within 60 days of completion of the emergency work, there is no provision addressing the time frame for which the restoration work must be completed. The proposed amendment will require that the restoration work itself be completed in accordance with an approved restoration plan that must be initiated within 90 days of projection completion or prior to the beginning of the next rainy season, whichever time period is greater. As such, the Commission finds the proposed amendment consistent with, and adequate to carry out, the policies of the City's LUP segments.

6. Other proposed changes/corrections/clarifications to LDC

The City is also proposing a number of minor corrections/changes to the LDC to correct inconsistencies in the regulations, clarify confusing aspects of the regulation, or correct provisions that have created unintended consequences. The standard of review is the City's certified Land Use Plan Segments (i.e., La Jolla, Mission Beach, Pacific Beach, Ocean Beach, Peninsula, etc.). These include the following which are applicable in the coastal overlay zone:

Remove redundancies between Chapter 6 and LDC- As part of the adoption of the LDC, many of the regulations contained in the Municipal Code Chapter 6, Article 2 relating to public improvements, public right-of-way, encroachments, and grading were transferred to applicable sections of the LDC. However, the ordinance adopting the LDC did not repeal the necessary divisions. The proposed amendments would repeal the duplicative sections in Chapter 6, Divisions 1-3 and where necessary transfer the Chapter 6

regulations to the applicable sections of the LDC. Chapter 6 is not part of the LCP so this proposed change could result in a potential change to the standard of review.

Defacing or Removing Posted Notices- Currently the LDC does not have a specific regulation that prohibits the defacing or removal of a Notice of Application or a Notice of Future Decision places on a property. The proposed amendment would add a section to clarify that it is unlawful to deface or remove a posted notice. The change will allow Neighborhood Code Compliance staff to reference a specific section when issuing a violation citation.

Amend the Definition of Kitchen- When the LDC was adopted, the definition of kitchen changed from “facility used or designed to be used for the preparation of food” to “facilities used or designed to be used for the preparation of food and contains a sink, a refrigerator, stove and a range top or oven.” The definition became more specific by including the various appliances that must be present to determine if a room is a kitchen. The new definition has been problematic because a defining factor of a dwelling unit is that it must contain a kitchen. This has made it difficult for Neighborhood Code Compliance Department (NCCD) staff to issue citations for illegal dwelling units where functioning dwelling unit does not have all of the appliances that constitute a kitchen per the LDC. In many cases the owners are renting out illegal units that lack adequate cooking facilities (small refrigerator, a small sink, and a microwave or hot plate), which in turn create health and safety hazards for the surrounding neighborhood.

City staff originally proposed to revert the former definition of kitchen that just stated that a kitchen is a facility used or designed to be used for the preparation of food. However, the Planning Commission recommended against the definition because they thought it was not specific enough. The City has since revised the language as follows: “Kitchen means an area used or designed to be used for the preparation of food which includes facilities to aid in the preparation of food such as a sink, a refrigerator, and a stove, range top or oven.” The new definition better meets the intent and provides some latitude for NCCD staff to make a determination if the unit is actually functioning as a separate, illegal dwelling unit.

Determining Proposed Grade and Height Measurements for Pools and Spas- Structure height is measured from the lower of existing or proposed grade, within five feet of the structure’s perimeter, to the highest point of the structure. Proposed grade is the ground elevation that will exist when all proposed development has been completed. It was not intended that the height calculation for an adjacent structure be taken from the bottom of a pool; however, the only exception explicitly stated in the code deals with basements. In order to clarify, Section 113.0231 will be amended to also exclude pools from the calculation of proposed grade. Additionally, a new section (Section 113.0270(a)(8)) and new Diagram 113-0200 will describe how to measure overall building height when a pool is located within 5 feet of the structure. Diagram 113-02H (ref. p. 9 of 55 of Exhibit No. 3) will also be modified to clarify where proposed grade is measured from for basements. The proposed changes will eliminate confusion when measuring structure height in these instances.

Procedures for Issuing a Stop Work Order- According to the current language, the City Attorney must approve all Stop Work Orders before they are issued, except where irreparable harm is imminent so as to warrant an emergency Stop Work Order. Clarification is needed to distinguish between work being done with a permit and work being done without a permit. The proposed language clarifies that the requirement for City Attorney approval only pertains to work where a permit has been issued. City Attorney approval is not needed to issue a Stop Work Order for work that is being done without a permit or being done illegally. Neighborhood Code Compliance would then be able to issue a Stop Work Order immediately where a permit has not been issued.

When a Map Waiver May Be Requested- The Subdivision Map Act Section 66428 allows a subdivider to request a waiver from the requirement to file a tentative map, parcel map, or final map for the development of condominium projects. The current language in the LDC only addresses the construction of new condominium projects and does not specify that existing structures are also eligible for map waivers. The proposed language would clarify that conversions of existing structures into condominiums are allowed to request a map waiver of the requirement to file a tentative map or parcel map.

When a Demolition Removal Permit May Be Issued- The proposed amendment is needed to clarify when a demolition permit should be issued for a structure on a property that has a development permit application in process. The proposed edit is consistent with the requirement of consolidation of processing which requires that multiple permits or approvals be consolidated and reviewed by a single decision maker based on the highest level authority.

Variable Setbacks in Residential Zone- In the Residential Estate (RE) and Residential Single Dwelling Unit (RS) zones, side yards setbacks are allowed to observe a designated minimum dimension as long as the combined dimensions of both side setbacks equal at least 20 percent of the lot width. The variable setback option was intended to allow applicants flexibility in siting structures and to protect views where applicable. However, the variable side setback was not intended to allow development to observe minimum setbacks on both sides of the premises. Since this distinction is not clear, the proposed language clarifies that once a side setback is established for the premises, it applies to all additions constructed thereafter.

Consistency between Bay Window and Dormer Projections- As currently written, the LDC requires that bay windows must be placed at least four feet from the property line. The requirements for dormers is three feet from the property line. For consistency purposes, the proposed amendment would allow both bay windows and dormers be placed three feet from the property line.

Refuse and Recycle Material Storage- The refuse and recyclable material storage section required commercial development to locate material storage areas at least 25 feet from any pedestrian and vehicular access point. The code also requires that a premises served by an alley provide material storage areas that are directly accessible from the alley.

Since alley access is encouraged for commercial development, it is difficult for development to meet both requirements. The proposed amendment distinguishes between commercial development served by an alley and commercial development without an alley. This will eliminate conflicting requirements and will require only commercial development not served by an alley to provide a storage area at least 25 feet from any access point.

Retaining Wall regulations- The current LDC Diagram 142-03G (Retaining Wall Requirements) does not coincide with the text and can be confusing. The proposed modifications would update the text within the diagram for consistency with the text contained in the associated provisions. The diagram currently uses the term “horizontal separation” and the text in the provisions use the term “horizontal distance” to convey the same information. Additionally, the text below the diagram states that the horizontal separation can be equal to *or less* than the height of the upper wall, which is inconsistent with the requirements of the section. The proposed edits will clarify that the minimum horizontal distance must be *greater than or equal* to the height of the upper wall (reference Diagram 142-03H/p. 43 of 55 of Exhibit 3).

Measuring Setbacks- Setbacks are measured inward and perpendicular to the nearest property line. Underground structures are not subject to setbacks requirements unless the proposed location would conflict with required landscape and irrigation. The current code does not clearly address this potential conflict. Modified language is proposed in order to clarify that the required setbacks apply to those portions of underground parking structures, first stories, and basements that are above grade and where underground structures would conflict with required landscaping.

Turret Encroachment Beyond Maximum Structure in RT Zones- The RT zone allows for a turret (a small tower element) to encroach into the angled building envelope area up to five feet above the maximum height of the zone. The proposed language will clarify that a turret may encroach beyond the maximum height of the applicable RT zone, but where an overlay zone is applicable the proposed turret shall not exceed the established height limit of any overlay zone. For example, the proposed encroachment shall not exceed the 30-foot height limit established under Proposition D within the Coastal Height Overlay Zone.

Noise Abatement- The existing Sound Level Limits within Chapter 5 have not been updated to reflect the existing Building Code. Modifications are proposed to the Noise Abatement and Control Table to reflect the updated requirements and to clarify that the applicable limits are based on land uses and not base zones as the Table previously indicated.

Chimneys and Dormers- The current code addresses chimneys and dormers in separate sections of the code, but allows both chimneys and dormers to project into the space above the angled building envelope area in specified zones. The proposed code changes will clarify both elements are permitted architectural projections into the angled building envelope in the specified residential zones.

In summary, the Commission finds the above described changes/corrections/clarifications to various sections of the Land Development Code do not raise any coastal issues or conflicts with the certified LUP policies and LDC and can be found consistent with, and adequate to implement the policies of the City's certified Land Use Plan segments.

PART IV. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission and the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform with CEQA provisions. In the case of the subject LCP amendment request, the Commission finds that approval of the City implementation plan amendment, as proposed, would result in significant impacts under the meaning of the California Environmental Quality Act. Without additional clarifying language to assure that developments approved to accommodate the disabled individuals in the housing sector is most protective of coastal resources and consistent with all other policies for the certified LUPs, potential impacts to such resources might occur. Suggested modifications have been proposed which will make it clear that the alternatives to modify a dwelling unit have been considered and that the alternative that has the least impact on coastal resources is chosen.

In addition, without clarifying language (addressing ROW improvements), that a coastal development permit is required for any installation of landscaping in the public right-of-way in the coastal overlay zone, significant impacts to public views to the ocean could occur. Suggested modifications have been proposed that specify that a coastal development permit is required.

With inclusion of the suggested modifications, implementation of the proposed revisions to the Land Development Code will not result in significant impacts under the meaning of the California Environmental Quality Act. Therefore, this modified LCP amendment can be found consistent with the provisions of the California Environmental Quality Act.